SUBJECT INDEX

	Page
Opinion Below	2, 3
Jurisdiction	3, 4, 5, 6
Statutes Involved	6,
Questions Presented	6, 7
Statement of the Case	
A. How the Federal Questions have been presented	7, 8
B. Factual Background	8, 9, 10
C. Reasons for granting the Writ - Substantial Issues	10, 11, 12, 13
APPENDIX "A" - Minutes of reinstatement of probation by trial court	A-1
APPENDIX "B" - Memorandum of Decision, Appellate Department, Superior Court	B-1
APPENDIX "C" - Order granting certification to Court of Appeal	C-1

APPENDIX "D" - Order by Court of Appeal denying certification

D-1

APPENDIX "E" - Order denying Alternative Writ, Supreme Court of the State of California

E-1

IN THE SUPREME COURT OF THE UNITED STATES

_____ Term

No. _____

GLEN MILLER PERKINS,

Appellant,

- vs -

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

On Appeal from the Appellate Department of the Superior Court of the State of California, In and For the County of San Bernardino

---

Petition for Writ of Certiorari

LITTLETON GUNN
364 North Mountain View
San Bernardino, California
92401
Telephone: (714) 383-2816
Attorney for Appellant

Of Counsel:
DYSON COX
Public Defender's Office
1050 West Sixth Street
Ontario, California
91762
Telephone: (714) 988-1386

TABLE OF AUTHORITIES CITED

Cases	Page
Cramp. v. Board of Public Instruction, 368 U.S. 278	14
Griswold v. Connecticut, 381 U.S. 479	12, 13
Lanzetta v. New Jersey, 306 U.S. 451	14
Skinner v. Oklahoma, 316 U.S. 535	11
Dear Wing Jung v. U.S., 312 F2d 73	18
Roe v. Wade, 314 F. Supp. 1217	13
Statutes	
28 U.S.C. section 1257(3)	5
United States Constitution, Eighth Amendment	6, 7
United States Constitution, Ninth Amendment	6
United States Constitution, Fourteenth Amendment	6, 7

IN THE SUPREME COURT OF THE UNITED STATES

No. _____

GLEN MILLER PERKINS,

Appellant,

- vs -

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

On Appeal From the Appellate Department of the Superior Court of the State of California, In and For the County of San Bernardino.

Petition for Writ of Certiorari to the Appellate Department of the Superior Court, County of San Bernardino, State of California

---

Appellant appeals from the order, entered on February 25, 1972, by the Appellate Department of the Superior Court of California, in and for the County of

San Bernardino, affirming the order granting probation as reinstated.

The case was certified to the California District Court of Appeal, Fourth Appellate District, Division Two, on March 24, 1972, but by order received April 12, 1972 the Court of Appeal denied certification.

A petition for Writ of Mandate was taken to the Supreme Court of California to compel the Court of Appeal to decide the issue involved. The petition for Writ was denied May 10, 1972 by the Supreme Court of California. This statement is submitted to show that the Supreme Court of the United States has jurisdiction.

OPINION BELOW

The judgment of conviction and subsequent reinstatement of probation by the trial court was not officially reported and was not formally entered.

A copy of the portions of the Clerk's minutes in said action are attached hereto as Appendix "A". The memorandum decision of the Appellate Department of the Superior Court was entered without opinion, and is not officially reported. A copy of the decision is attached hereto as Appendix "B". The order by the Appellate Department of the Superior Court granting certification to the Court of Appeal is attached hereto as Appendix "C". The order by the Court of Appeal, State of California, Fourth Appellate District, Division Two, denying certification is attached hereto as Appendix "D". Lastly, the order by the Supreme Court of California denying petition for Writ of Mandate is attached hereto as Appendix "E".

JURISDICTION

This is a misdemeanor criminal action brought against Appellant Glen

Miller Perkins for alleged violation of California Penal Code Section 270. The Appellant was convicted on October 21, 1969, and thereafter on November 26, 1969 was granted probation under specified terms and conditions. Appellant's probation was subsequently revoked on March 25, 1970, due to alleged violations including non-payment of support. Probation was reinstated after hearing on September 23, 1971.

There was, however, included the addition of term six (6) of probation which forms the basis of this petition for Writ of Certiorari.

Appellant filed a Notice of Appeal to the Appellate Department of the Superior Court of San Bernardino on September 28, 1971; and said Appellate Department entered a decision affirming the reinstatement of probation order, without opinion, on February 25, 1972.

Appellant applied to have the case certified for further appellate review to the Court of Appeal, State of California, Fourth Appellate District, Division Two, and the application was granted by minute order dated March 24, 1972. The Court of Appeal denied certification under provisions of Rule 63, California Rules of Court by order received April 12, 1972. Petition for Writ of Mandamus filed with the Supreme Court of California to compel the Court of Appeal to decide this issue was denied on May 10, 1972. Justice Peters of the California Supreme Court was of the opinion that the petition should be granted.

The jurisdiction of the Supreme Court to hear this appeal rests on 28 U.S.C. Section 1257(3). This appeal draws into question the validity of term six (6) of Appellant's probation as reinstated which provides that the Appellant

"Not procreate any illigitimate children he is not able to support so that they become welfare charges under the Aid to Dependent Children Program", on the ground of it being repugnant to the defendant's basic federal Constitutional liberties.

STATUTES INVOLVED

United States Constitution, Eighth Amendment

United States Constitution, Ninth Amendment

United States Constitution, Fourteenth Amendment

QUESTIONS PRESENTED

1. Does term six (6) of Appellant's probation which limits his fundamental right of procreation exceed the permissible bounds of a proper term of probation as attempting to effectuate a legitimate judicial policy and violate the sanctity of a fundamental right protected by the Ninth Amendment?

2. Is term six (6) of Appellant's probation vague and ambiguous as to not clearly set forth a standard of conduct which Appellant can follow and as such violate an essential of due process of law?

3. Does term six (6) of Appellant's probation in effect impose a banishment on Appellant from the State of California contrary to the United States Constitutional guarantees of the Fourteenth and Eighth Amendments?

STATEMENT OF THE CASE

A. HOW THE FEDERAL QUESTIONS HAVE BEEN PRESENTED.

The federal questions presented here were raised by Appellant by argument and evidence tendered to the trial court, and by argument in Appellant's brief before the Appellate Court. The questions presented here have been the basic substance of Appellant's defense to

the imposition of term six (6) of Appellant's probation at every stage of this criminal action.

B. FACTUAL BACKGROUND

Appellant plead guilty to non-support of a minor child on October 21, 1969. He was granted probation on November 26, 1969 on the terms and conditions that he (1) not violate any City, County, State, or Federal laws; (2) pay to the Probation Office the sum of sixty (60) dollars every month for the support of his minor child; (3) report to the Probation Office once every 30 days or as directed; and (4) cooperate with the Probation Office in a plan of rehabilitation and follow all reasonable directives of the Probation Office. On March 25, 1970, probation was ordered revoked by the Honorable Judge Thomas C. Parry for non-payment of support and failure to report to the Probation Office. The

Appellant next appeared before the Honorable James J. McCartney who had succeeded Judge Parry in office. A revocation of probation hearing was held on September 23, 1971. At this hearing Judge McCartney noted for the record that the Appellant had made only one 50 dollar payment from November 26, 1969 to September 23, 1971, and that for a fourteen month period prior to September 23, 1971 the Appellant was working at Kaiser Steel, Inc., making a gross salary of 120 dollars a week. Judge McCartney also recorded that the Appellant is not married and that he is the father of six children through five different mothers, none of whom he has ever been married to. For these reasons Judge McCartney revoked probation. Probation was then reinstated under specified terms and conditions including a voluntary wage assignment of 25 dollars and fifty cents a week and

under term six (6) that the Appellant "Not procreate any illigitimate children whom he is not able to support so that they become a welfare charge under the Aid to Family with Dependent Children Program". Judge McCartney explained specifically in relation to term six (6) that he thought it constitutionally valid and appropriate due to the Appellant's meretricious relationships and cost to the State of California.

C. SUBSTANTIAL ISSUES

Term six (6) of petitioner's probation limiting procreation restricts a fundamental civil right and in doing so puts a physical and psychological restraint which is so far-reaching and disruptive of the human will that the petitioner contends it violates the essence of his United States Constitutional guarantees protecting the dignity of man.

Procreation involves a basic liberty

and has been so recognized in Skinner v. Oklahoma, 316 U.S. 535, 62 S. Ct. 1110, 86 L. Ed. 655. As stated in Skinner, a sterilization case, procreation "involves one of the basic civil rights of man. Marriage and procreation are fundamental to the very existence and survival of the race. The power (to sterilize), if exercised may have subtle, far-reaching and devastating effects".

Petitioner contends that any restriction on such a basic liberty is onerous, destructive of morale, and, generally so negative in its impact on effective rehabilitation as to be arbitrary and irrational. Such a provision as term six (6) of petitioner's probation tends to frustrate a desire for human dignity. A rehabilitative effect is clearly non-existent. The only conceivable rationale for the imposition for such a term of probation is to save the

State and/or County money. Such a purpose, although positive in the abstract, pales before the irreparable harm which is almost certain to result when such term of probation is applied in a human setting. The interest of the public in saving money for the taxpayers is by no means the same thing as the public interest in reformation and rehabilitation of offenders which forms basis of the probation system. Probation orders are not merely bookkeeping arrangements.

The essence of the interest sought to be protected here is the right of choice over events which, by their character and consequences, bear in a fundamental manner on the privacy of individuals. The Ninth Amendment shows the intent that fundamental rights, other than those enumerated in the first eight Amendments, should not be denied or disparaged. Griswold v. Connecticut 381

U.S. 479, 492, 85 S. Ct. 1678, 14 L.Ed. 2d 510 (1965) as stated by former Associate Justice of the United States Supreme Court and quoted approvingly by the federal court in Roe v. Wade 314 F. Supp. 1217 (1970) 'The result of these decisions (Griswold v. Connecticut) and those leading up to it) is the evolution of the concept that there is a certain zone of individual privacy which is protected by the Constitution. Unless the State has a compelling subordinating interest that outweighs the individual rights of human beings, it may not interfere with a person's marriage, home, children and day to day living habits. This is one of the most fundamental concepts that the Founding Fathers had in mind when they drafted the Constitution!'

Petitioner contends that a probation term to be effective and withstand

Constitutional attack must clearly and definitely set forth a standard of conduct which the probationer can follow. Such standards must apply as in statutory law. This body (the United States Supreme Court) has declared that a statute which requires the doing of a act in terms so vague that men of common intelligence must necessarily guess at the meaning and differ as to its application, violates the first essential of due process of law. Cramp. v. Board of Public Instruction 368 U.S. 278, 82 S. Ct. 275, 7 L. Ed. 2d 285. No one may be required at the peril of his life or liberty to speculate as to the meaning of a penal requirement. All are entitled to be informed as to what the State commands or forbids. Lanzetta v. New Jersey 306 U.S. 451, 453, 59 S. Ct. 618, 83 L. Ed. 888 (1939).

A condition which is vague and in-

definite subjects the well intentioned probationer to revocation if he fails accurately to guess what is a violation. In this case the petitioner must guess at the time his child is conceived whether or not his yet unborn child will eventually end up on the Aid to Dependent Children Program. This clearly calls for gross speculation on behalf of petitioner. In fact, the petitioner may reasonably believe at the time of procreation and be supported by his objective circumstances that the unborn child will not become a charge under the disallowed program. But later, due to changed circumstances beyond his control (illness, environmental disaster, etc.) he may have to apply for aid under this program. Further, the circumstance could arise that more than one child may be born from one act of procreation. This clearly could not be predicted by petitioner yet the petition-

er's resources that would be sufficient for one child might be insufficient for two or more.

The probationary term under question makes it a violation of probation to procreate illegitimate children only if such offspring become charges under the Aid to Families with Dependent Children program. It may be reasoned that in effect the defendant is allowed to procreate and that the unlawful behavior is seeking aid under the above program. The reality is obvious, however, that the defendant being poor is likely to remain so and is under a terrific impetus not to procreate because so doing would almost certainly lead to a violation of probation. The father of a child is under a legal obligation to provide for that child and if the defendant could not support a future illegitimate child the only suitable aid

program may well be the one under consideration here.

As a practical result the term of probation may seriously endanger the welfare of any child so procreated contrary to the very precepts of our society. The defendant, if he cannot financially provide for a future illegitimate child, is encouraged by this term not to seek care through the channel which may be the only adequate one available. That the Court should provide such impetus to violate State and Human law is gross error. If however, as would be natural, the defendant seeks to provide for such child and does not have the finances to do so he is forced to move from this State and reside in a place where the Court does not have jurisdiction and where the defendant could lawfully apply for State aid for his child. In this regard the term of probation is a banishment.

Banishment is beyond the power of the Court to impose as a condition of probation.

As held in Dear Wing Jung v. U.S. CA 9th, 1962 312 F2d 73, 75-76, a condition of probation equivalent to a banishment is either cruel or unusual or a denial of due prccess and in any event is unconstitutional.

Dated this _____ day of _____, 1972.

Respectfully submitted,

LITTLETON GUNN
Public Defender's Office
364 North Mountain View
San Bernardino, California

DYSON WM. COX
Public Defender's Office
1050 West Sixth Street
Ontario, California, 91762

APPENDIX

APPENDIX A

9/23/71

James J. McCartney, Linda Cross, DDA

Hargrove, P.O. Ashworth, Public Defender

Gunn with Defendant, Court Reporter. K.B.

On recommendation Probation Officer, probation ordered reinstated under following conditions:

1) Violate no law

2) Pay $25.50 per week for support of his minor children commencing 10/7/71, pursuant to a wage assignment signed this date.

3) Report to the Probation forthwith and as directed.

4) Not leave the state without permission of the Probation Office.

5) Cooperate with Probation Office in a plan of rehabilitation and follow directives of the Probation Office

6) Not procreate any illegitimate children he is not able to support so that they become welfare charges under the Aid to Dependent Children Program.

7) Maintain gainful employment to the best of his ability.

APPENDIX B

IN THE APPELLATE DEPARTMENT

OF THE SUPERIOR COURT

COUNTY OF SAN BERNARDINO,

STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent - vs - GLEN MILLER PERKINS, Defendant and Appellant.	No. CR. A.355 MEMORANDUM OF DECISION

The order granting probation is affirmed.

DATED: February 25, 1972

(Signed)
Edward P. Fogg
Presiding Judge

CONCUR: (Signed)
Joseph T. Ciano, Judge

CONCUR: (Signed)
Richard C. Garner, Judge

APPENDIX C

IN THE APPELLATE DEPARTMENT

OF THE SUPERIOR COURT

COUNTY OF SAN BERNARDINO,

STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent - vs - GLENN MILLER PERKINS, Defendant and Appellant.	TRIAL COURT NUMBER: 86981 Number: CR. A.355

CERTIFICATION TO THE COURT OF APPEAL

It appearing to the Appellate Department of the Superior Court of the County of San Bernardino, that the transfer of the above entitled action to the Court of Appeal is necessary to settle an important question of law, which is of first impression, it is

ordered that the above entitled appeal be transferred to the Court of Appeal - State of California, Fourth Appellate Division, Division Two, pursuant to Rule 63 of the California Rules of Court.

Dated this 24th Day of March, 1972

(Signed)
Edward P. Fogg,
Presiding Judge

APPENDIX D

COURT OF APPEAL

STATE OF CALIFORNIA

FOURTH APPELLATE DIVISION

DIVISION TWO

PEOPLE, ETC.	4 Crim No. 5620
- vs -	(County No. Muni. 86981)
GLENN MILLER PERKINS	(CR. A-355)

BY THE COURT:

Certification under the provisions of Rule 63, California Rules of Court, is DENIED.

Kerrigan, J (Acting) P.J.

Copies to:

County Clerk, for Appellate Dept., San Brdno. 92401
Municipal Court Clerk, San Brdno, 92401
Pub.Dfndr. 364 N. Mountain View, San Brdno
Dist. Attny. San Brdno. 92401

APPENDIX E

ORDER DENYING ALTERNATIVE WRIT

L.A. No. 30004

IN THE SUPREME COURT

IN BANK

PERKINS (GLEN MILLER)

V.

COURT OF APPEAL,

FOURTH DISTRICT DIVISION TWO.

Petition for writ of Mandamus DENIED

Peters, J., is of the opinion that the petition should be granted.

(Signed Wright)
Chief Justice

AFFIDAVIT OF SERVICE

All parties to be served have been served.

This is to certify that I have this ____ day of July, 1972, served a copy of the Petition for Certiorari in the case of Glen Miller Perkins vs. People of the State of California, by depositing in the U.S. mail, first class, postage prepaid, on the following person.

Mr. Harry Hansen
Deputy District Attorney
Child Support Division
County of San Bernardino
340 Mt. View Avenue, First Floor
San Bernardino, California, 92401

Phyllis Q. Stremming
Secretary
Public Defender's Office
364 N. Mt. View Avenue
San Bernardino, California

FILED
FEB 8 1973
MICHAEL RODAK, JR., CLERK

NO. 72-5125

IN THE

SUPREME COURT OF THE UNITED STATES

GLEN MILLER PERKINS, Petitioner

v.

PEOPLE OF THE STATE OF CALIFORNIA, Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SAN BERNARDINO

BRIEF FOR RESPONDENT IN OPPOSITION

OF COUNSEL
Lowell E. Lathrop
District Attorney
County of San Bernardino
State of California
William R. Timmerman
Deputy District Attorney
County of San Bernardino
340 North Mt. View Avenue
San Bernardino, Ca. 92415
Tel: (714) 383-1079

COUNSEL FOR RESPONDENT
Evelle J. Younger
Attorney General
State of California
William E. James
Assistant Attorney General
State of California
217 West First Street
Los Angeles, Ca. 90012
Tel: (213) 620-3175

INDEX

	Page
Decisions Below	1
Jurisdiction	2
Question Presented	2
Statutes Involved	3
Argument	4
I. The Condition of Probation Is a Proper Exercise of Judicial Discretion Conferred by State Statute	7
II. No Important Question of Federal Law Is Presented	10
A. The Condition Does Not Deny Petitioner Due Process or Any Right Protected by the Ninth Amendment	10
B. The Condition of Probation is Not Vague or Indefinite	13
C. The Condition of Probation Imposed Upon Petitioner Does Not Constitute "Banishment"	15
Conclusion	17
Appendix	19
A. California Penal Code Section 1203.1(Applicable Portion)	20
B. California Penal Code Section 270(Applicable Portion)	21

TABLE OF AUTHORITIES

Cases: Page

Cooper v. Talfair, 4 Dall. 14, 1 L. Ed. 721.....16
Cramp v. Board of Public Instruction, 368 U. S. 278.....13, 15
Griswold v. Connecticut, 381 U. S. 479..... 5, 10, 12
Lanzetta v. New Jersey, 306 U. S. 451.....13, 15
Skinner v. Oklahoma, 316 U. S. 535..... 5, 10, 11, 12
Dear Wing Jung v. U. S., 312 F. 2d 73.....16
In re Bushman, 1 Cal 3d 767, 83 Cal. Rptr 375..... 8
People v. Miller, 116 Cal App. 2d 34, 8 Cal Rptr 578..... 7

Statutes

United States Constitution, Eighth Amendment..... 2, 3, 16
United States Constitution, Ninth Amendment..... 2, 3, 10
United States Constitution, Fourteenth Amendment..... 2, 3, 10, 11,
California Penal Code Section 270..... 4, 8, 9
California Penal Code Section 1203.1 ..... 4, 7, 8

IN THE SUPREME COURT OF THE UNITED STATES

_____ Term

No. 72-5125

GLEN MILLER PERKINS, Petitioner

vs.

PEOPLE OF THE STATE OF CALIFORNIA, Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE APPELLATE DEPARTMENT OF THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA,
FOR THE COUNTY OF SAN BERNARDINO.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

DECISIONS BELOW

The decisions below are adequately set forth in the petition for certiorari and the appendix thereto.

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition for certiorari.

QUESTION PRESENTED

Whether a state court, pursuant to discretionary powers conferred upon it by state law, may, without infringing upon rights guaranteed by the Eighth, Ninth and Fourteenth Amendments, condition probation granted to a father of six illegitimate children born to five different women, who stands convicted of wilfully failing to provide necessary support for a minor child, upon an order not to procreate illegitimate children he is unable to support so that they become public welfare charges.

STATUTES INVOLVED

United States Constitution,
Eighth Amendment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

United States Constitution,
Ninth Amendment

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

United States Constitution,
Fourteenth Amendment(§1)

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States of the State wherein they reside. No State shall make or

enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

California Penal Code Section 270
(Appendix A)

California Penal Code Section 1203.1
(Appendix B)

ARGUMENT

The question presented by this case is uniquely narrow. No amount of strained and tailored factual speculation can transform it into one justifying consideration by this Court on certiorari.

The probation order challenged by petitioner is a proper exercise of the court's discretion as conferred upon it by state law. It is an appropriate judicial effort to encourage petitioner who has demonstrated his propensity for promiscuous and irresponsible parenthood, to recognize his paternal obligations, and to henceforth confine his procreative efforts within a legally established familial relationship.

Neither Skinner v. Oklahoma, 316 U. S. 535, nor Griswold v. Connecticut, 381 U. S. 479, cited by petitioner, extends constitutional protection to the right to procreate beyond the marital relationship.

Nor, is the condition of probation complained of so vague and indefinite as to be repugnant to due process. The

restriction it imposes is set forth in clear language of common understanding. There is no room for speculation as to what conduct is enjoined. The only uncertainties arise not from the language defining the proscribed conduct, but from doing that which is conditionally prohibited--procreating illegitimate children.

Petitioner's contention that the condition constitutes "banishment" is so devoid of merit that it is frivolous.

The petition for certiorari presents no substantial question of federal importance, and should be denied.

I

THE CONDITION OF PROBATION IS A PROPER EXERCISE OF JUDICIAL DISCRETION CONFERRED BY STATE STATUTE

In California, probation is not an absolute right to which a person convicted of a crime is entitled. Rather, it is an act of clemency by the court, a privilege founded not upon any provision of the state or federal constitutions, but existing solely as a function of the statutes creating it. Cal. Pen. Code §§1203 et seq; People v. Miller, 186 Cal. App. 2d 34, 8 Cal. Rptr. 578 (1960).

California courts are vested with broad discretionary powers to impose restrictive conditions of probation. A court granting probation may impose any "reasonable conditions, as it may determine are fitting and proper to the end that justice may be done...and specifically for the reformation and rehabilitation

of the probationer". Cal. Pen. Code §1203.1. A condition is only invalid if (1) it has no relationship to the crime of which the defendant was convicted, (2) relates to conduct that is not itself criminal, or (3) requires or forbids conduct that is not reasonably related to future criminality. In re Bushman, 1 Cal. 3d 767, 83 Cal. Rptr. 375 (1970).

Petitioner stands convicted of wilfully failing to provide necessary support for a child, in violation of Section 270 of the California Penal Code. The record reveals that petitioner has fathered a total of six children, born to five different women, all out of wedlock. Under the condition of probation petitioner here seeks to invalidate, he is directed "Not to procreate any illegitimate children he is not able to support so that they become welfare

charges under the Aid to Families with Dependent Children Program". While in California, it is not unlawful to procreate illegitimate children, a father who wilfully fails to provide for his minor child, legitimate or illegitimate is subject to criminal prosecution. Cal. Pen. Code §270. The probation order petitioner complains of is not an absolute prohibition against his procreation of illegitimate children. It is conditioned upon petitioner's inability to support them. Its relationship to both the crime for which petitioner was convicted and to acts potentially criminal is clear.

The order also has a commendable rehabilitative thrust. By placing no limitations upon petitioner's right to father legitimate children, it encourages him to confine his procreative efforts to marriage.

II

NO IMPORTANT QUESTION OF FEDERAL LAW IS PRESENTED

A. The Condition Does Not Deny Petitioner Due Process or any Right Protected by the Ninth Amendment.

Petitioner contends that the condition of probation is unduly restrictive of his right to procreate and is therefore violative of the constitutional guarantees "protecting the dignity of man" contained in the Ninth and Fourteenth Amendments. In support of this contention, he cites Skinner v. Oklahoma, supra p. 5, and Griswold v. Connecticut, supra p. 5.

The contention is without merit. The cases cited are not controlling.

Skinner involved a state statute providing for surgical sterilization of persons determined to be habitual criminals as therein defined. It was struck down under the equal protection

clause of the Fouteenth Amendment because the definition of "habitual criminals" created unreasonable classifications of persons against whom the statute was applied. The instant case involves no such discrimination.

Moreover, once invoked, the restrictive effect of the statute invalidated in Skinner was complete and irreversible. The restriction imposed upon petitioner in the instant case is neither. The prohibition against procreating illegitimate children is conditioned upon his failure to support them so that they become public charges. No limitation is imposed upon his right to father legitimate children.

Most importantly, the scope of the protection afforded the right to procreate in Skinner did not extend beyond the marital relationship. The

Court discusses the right to marry and procreate as inseverable.

> "We are dealing with legislation which involves one of the basic civil rights of man. Marriage and procreation are fundamental to the very existence and survival of the race." (316 U. S. 535 at p. 541, emphasis added)

Likewise in Griswold, the object of the Court's concern was the marital relationship. There, a state law which defined the use of contraceptives as a criminal offense was invalidated as an unconstitutional invasion of the right of privacy of a married person.

Thus, the extent of the constitutional protection afforded the right threatened in both Skinner (to procreate) and Griswold (sexual privacy) does not reach beyond the marital relationship. No such relationship is visible in the present case.

B. The Condition of Probation is Not Vague or Indefinite

Petitioner's contention that the condition of probation is so vague and indefinite that it is repugnant to due process is without merit. Neither Cramp v. Board of Public Instruction, 368 U. S. 278, nor Lanzetta v. New Jersey, 306 U. S. 451, cited by petitioner, is factually analagous to petitioner's case.

Cramp involved a Florida Statute which required state employees to execute a written oath in which they were required to swear among other things that they had never lent "aid, support, advise, counsel, or influence to the Communist Party". The Court held that the language quoted, used in the context of the statute was too ambiguous, and the room for its interpretation too broad for a conscientious person to safely execute the oath.

In Lanzetta a state statute, without

proscribing any act or ommission, imposed criminal sanctions against "gangsters". The term was defined in the statute. The definition was held to be vague and uncertain, and the statute was invalidated as being a denial of due process.

Before a statute which forbids the doing of an act fails for uncertainty, its provisions must be so vague the men of common intelligence must necessarily guess at its meaning and differ as to its application. Cramp v. Board of Public Instruction, supra p. 13(emphasis added). The conduct enjoined by petitioner's probationary condition is clearly defined. He is prohibited from fathering illegitimate children whom he is unable to support. There is no restriction on his right to procreate either illegitimate children whom he is capable of supporting or legitimate children.

COPY BOUND TOO CLOS

In a desperate attempt to force his case within the rule announced in Cramp and Lanzetta, petitioner confuses uncertainties in language used to define the prohibited act, condemned by the Fourteenth Amendment, with uncertainties attendant to a dynamic economy. All who have familial support obligations are subject to the same impredictable forces affecting their ability to meet them about which petitioner fearfully speculates. If petitioner limits his procreative efforts to the marital couch, a place to which he has heretofore been a stranger, he has nothing to fear from the probationary directive.

C. The Condition of Probation Imposed Upon Petitioner Does Not Constitute "Banishment"

Petitioner's incredible suggestion that the restriction complained of

LOSE IN CENTER

constitutes "banishment" condemned by the Eighth and Fourteenth Amendments demonstrates the paucity of substance to his entire attack.

"Banishment" is punishment inflicted upon criminals which compels them to leave a city, place or county for a specified period of time or for life. Cooper v. Telfair, 4 Dall. 14, 1 L. Ed 721. In Dear Wing Jung v. U. S., 312 F. 2d 74 (9th Cir. 1962), cited by petitioner in support of this contention, defendant was convicted of violating an immigration law; he was sentenced to a term of imprisonment execution of which was suspended for six months on condition that he leave the country.

The distinction between Jung and the present case is clear. There, it was necessary for the defendant to leave the country in order to comply with the

court's directive. Here, in a carefully tailored web of self-serving speculation, petitioner provides himself with the option of complying with the order or leaving the state.

Moreover, nothing petitioner fears will materialize if he confines his paternal instincts to a legally established marital relationship.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that no federal question of substantial importance is raised by this petition for certiorari and it should be therefore denied.

Dated this 1st day of February, 1973.

Respectfully submitted,

EVELLE J. YOUNGER
WILLIAM E. JAMES
Counsel for Respondent
By William E. James
William E. James

LOWELL E. LATHROP
WILLIAM R. TIMMERMAN
of Counsel
By William R. Timmerman
William R. Timmerman

APPENDIX

APPENDIX A

California Penal Code Section 1203.1
(Applicable Portion)

..."The court may impose and require any or all of the above-mentioned terms of imprisonment, fine and conditions and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from such breach and generally and specifically for the reformation and rehabilitation of the probationer, that should the probationer violate any of the terms or conditions imposed by the court in the instant matter, it shall have authority to modify and change any and all such terms and conditions and to reimprison the probationer in the county jail within

the limitations of the penalty of the public offense involved..."

APPENDIX B

California Penal Code Section 270
(Applicable Portion)

"A father of either a legitimate or illegitimate minor child who willfully omits without lawful excuse to furnish necessary clothing, food, shelter or medical attendance or other remedical care for his child is guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars ($1,000) or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment..."

AFFIDAVIT OF SERVICE

All parties to be served have been served.

This is to certify that I have this 2nd day of February, 1973, served a copy of the Brief for Respondent in Opposition to the Petition for Certiorari in the case of Glen Miller Perkins vs. People of the State of California, United States Supreme Court Case No. 72-5125, by depositing in the U. S. mail, first class, postage prepaid, on the following persons.

Mr. Littleton Gunn
364 North Mountain View
San Bernardino, Ca. 92401

Mr. Dyson Cox
Public Defender's Office
County of San Bernardino
1050 West Sixth Street
Ontario, California 91762

Francine Lewis

Francine Lewis, Clerk
District Attorney's Office
Child Support Division
340 North Mountain View
San Bernardino, California